

## REMARKS

### Amendments to the Specification

Paragraph 51 was amended to correct the typographical error of “MYKD” to “NYKD.” The Applicants hereby state that the amendment did not add new subject matter to the specification.

### Amendments to the Claims

Claims 11, 45-51 and 53-60 are pending. The Applicants respectfully ask the Examiner to replace all prior versions and listings of claims in the present application with the listing of claims currently provided. Claims 1 and 47 were amended. Claims 45, 46, 49-51 and 53-60 were canceled due to an Examiner's restriction requirement. The Applicants hereby state that the amendments do not add new subject matter to the claims.

### Claim Withdrawal Pursuant to 37 C.F.R. § 1.142(b)

The Examiner has withdrawn from consideration Claims 45, 46, 49-51 and 53-60 pursuant to 37 C.F.R. § 1.142(b) on the grounds that these claims are directed to inventions that are independent or distinct from the invention originally elected, and thus, are directed to a non-elected invention. The Applicants have canceled Claims 45, 46, 49-51 and 53-60 covering non-elect inventions without prejudice.

### Rejection Pursuant to Judicially-Created Obvious-Type Double Patenting

The Examiner has provisionally rejected Claims 47 and 48 as allegedly being unpatentable over Claims 4 and 5 of U.S. Patent No. 6,903,187, Steward et al., *Leucine-based Motif and Clostridial Neurotoxins*, under the judicially created doctrine of obviousness-type double patenting.

The Applicants have filed a terminal disclaimer regarding U.S. Patent No. 6,903,187 pursuant to 37 C.F.R. § 1.321(c). The Applicants submit that the filing of this terminal disclaimer was done solely to establish a non-alienation agreement and should not be construed as an admission regarding the patentable distinctness of the presently claimed nucleic acid molecules and methods of making and purifying and those claimed in U.S. Patent No. 6,903,187. The Applicants respectfully submit that this terminal disclaimer overcomes the obviousness-type double patenting based on U.S. Patent No. 6,903,187 and request withdrawal of the obviousness-type double patenting rejection against Claims 47 and 48.

#### **Rejections Pursuant to 35 U.S.C. § 112, ¶ 1 Enablement**

The Examiner has rejected Claims 1, 47 and 48 as allegedly lacking enablement under 35 U.S.C. § 112, ¶ 1. The Applicants respectfully ask for reconsideration under 37 C.F.R. § 1.116.

The Applicants respectfully submit that presently amended claims are enabled and respectfully request withdrawal of the 35 U.S.C. § 112, ¶ 1 enablement rejection against Claims 1, 47 and 48.

#### **Rejections Pursuant to 35 U.S.C. § 112, ¶ 2 Indefinite**

The Examiner has rejected Claims 47 and 48 as allegedly being indefinite under 35 U.S.C. § 112, ¶ 2. The Applicants respectfully ask for reconsideration under 37 C.F.R. § 1.116.

The Applicants respectfully submit that presently amended Claims 47 and 48 are definite and respectfully request withdrawal of the 35 U.S.C. § 112, ¶ 2 indefinite rejection against Claims 47 and 48.

## **CONCLUSION**

For the above reasons the Applicants respectfully submit that the claims are in condition for allowance, and the Applicants respectfully urge the Examiner to issue a Notice to that effect. Should there be any questions, the Examiner is invited to call the undersigned agent.

Please use Deposit Account 01-0885 for the payment of any extension of time fees under 37 C.F.R. § 1.136 or any other fees due in connection with the current response.

Respectfully submitted,

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